



Republic v Kenya Wildlife Service & 2 others; Lekalkuli (Ex parte Applicant) (Judicial Review E012 of 2024) [2025] KEHC 14815 (KLR) (Judicial Review) (16 October 2025) (Judgment)

Neutral citation: [2025] KEHC 14815 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ISIOLO
JUDICIAL REVIEW
JUDICIAL REVIEW E012 OF 2024
SC CHIRCHIR, J
OCTOBER 16, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

KENYA WILDLIFE SERVICE 1ST RESPONDENT

**COUNTY WILDLIFE CONSERVATION & COMPENSATION COMMITTEE,
ISIOLO 2ND RESPONDENT**

**DIRECTOR, MINISTERIAL CONSERVATION COMPENSATION
COMMITTEE 3RD RESPONDENT**

AND

STORO LEKALKULI EX PARTE APPLICANT

JUDGMENT

1. By way of a Notice of Motion dated 20th December, 2024, the ex-parte Applicant (The Applicant) seeks for an Order of Mandamus compelling the Respondents, and specifically the 1st Respondent, through the 2nd Respondent, to deliberate upon the Applicant’s claim, lodged on 7th June 2024 within the next 30 days pursuant to Regulation 27 (1) (2) of the Wildlife Conservation and Management Compensation Regulations 2017; that the 1st Respondent to report to this court on the aforesaid deliberations within 30 days from the date of the issuance of the order. He further seeks for an order of Mandamus to compel specifically the 1st Respondent to pay the ex-parte Applicant the sum of Kshs. 2,000,000/= recommended, verified by the 3rd Respondent as Compensation for the Injuries sustained by the ex-parte Applicant in compliance with Regulation 27 (1) (2), within 14 days from the date of the issuance of the order.



2. On 17th December, 2024, the Applicant was granted leave by this court to bring the judicial review application.

The Applicant's Case

3. The Applicant states that on 5th November, 2023 while he was on his way home at Losera Area , Oldonyiro Location within Isiolo County, he was attacked by an Elephant. The incident was reported to the Area chief and police station at oldonyiro. He visited the 1st Respondent offices at Isiolo and filed a claim for compensation.
4. It is the Applicant's case that , pursuant to Regulation 27(1) of the wildlife conservation and Management compensation Regulations 2017, (The Regulations), and section 25 of the *wildlife conservation and Management Act* (The Act), the 2nd respondent is under an obligation to verify and deliberate on his claim and to recommend payment within 30 days of the filing of his claim.
5. He further states that the 1st Respondent has neglected/ failed /refused to compensate the Applicant despite her several visit to the 1st Respondent offices nor has there been any communication by the 2nd Respondent with regard to the status of the Applicant's claim.
6. The Applicant states that unless the court intervenes by issuing appropriate order of Mandamus as sought for in the Application, the application is bound to be rendered nugatory and whatever remedies that may ensue thereafter from this Application be of no practical value.

The 1st Respondent's Case

7. In a replying affidavit sworn by Leon Kalisto the Legal Officer, the 1st Respondent (The Respondent), opposes the Application. It is the respondent's case that it does not have the mandate to do what is demanded of by the Respondent ; That in terms of Section 19(1) and 25(2) of the Act, the duty to review and recommend payment of compensation on claims resulting from loss or damage caused by wildlife is the exclusive role of the 2nd respondent; that it merely offers secretarial services to the 2nd respondent . It is stated that the duty to direct the 2nd respondent to carry out its mandate is the work of the Cabinet secretary in charge of Tourism and wildlife. (The cabinet secretary).
8. The respondent further state that in its capacity as the secretariat of the 2nd respondent it is awaiting directives from the Cabinet secretary to commence the aforesaid deliberations.
9. The Application was canvassed by way of written submissions.

The Applicant's submissions

10. It is the Applicant's submissions that the respondent cannot invoke the provisions of section 9 of FAAA yet there is no evidence that the Applicant's claim as ever been deliberated upon by the respondents; that the Applicant is bound to follow the procedure laid down in the Act only after the Applicant's claim has been deliberated upon. That the purpose of the present Application is to compel the respondent , who has authority over the 2nd respondent , to deliberate the claims as provided for under the regulations.
11. The Applicant submits that the 1st Respondent is clothed with powers over the 2nd Respondent and makes reliance in the case of Republic vs Kenya Wildlife Service & County Conservation & Compensation Committee, Kiambu & Director, Ministerial Conservation Compensation Committee and Joyce Wangui Muhia, Joseph Boru & Ano vs Kenya wildlife services & Rift valley Agricultural contractors , among others (citations not provided)



12. On the relationship between the 1st , 2nd and 3rd respondents, it is pointed out that the 2nd respondent is the Agent of the 1st respondent and therefore the court should compel the 1st respondent who is the principal, to order the 2nd respondent to verify his claim and make appropriate recommendations. The Applicant has relied on section 16 of the Act which shows that the Board of trustees of the 1st respondent is responsible for the payment and allowances for the committees set up under section 18 of the Act which include the 2nd respondent herein.
13. On whether the 1st respondent is a necessary party to the suit, the applicant has relied on the case of *K W S -Vs- Joseph Musyoki Kalonzo (2017) eKLR* where it was held inter alia that the “Neither the Court nor the parties should concern themselves with the internal arrangements of the appellant as to whether it is the CEO of the appellant or the cabinet secretary who should disburse the money.”
14. Finally on whether the orders sought should be granted the Applicant submits that an order of mandamus is an appropriate remedy where a statutory body has failed to carry its duty under statute ,to the detriment of a party to whose the duty is owed.

Respondent’s submissions

15. It is the respondent’s submissions that pursuant to Section 18 of the Act , the cabinet secretary is the appointing Authority of the majority of the members of the 2nd respondent. Consequently, it is argued, the statutory mandate to constitute, and direct the 2nd respondent to verify and deliberate on the claims of such nature vests with the said cabinet secretary. That further, in terms of section 18(2) , any additional meetings can only be held with the prior consent of the cabinet secretary . It is further stated that the duty to make payments in respect to the claims is the duty of the compensation secretary.
16. The respondent further submits that the Applicant has not demonstrated that the 1st respondent has a statutory obligation to compensate him; That an order of mandamus can only issue where the applicant establishes a statutory duty on the part of the respondent. In this regard the decision in the case of *Republic – Vs – Kenya Vision 2030 Delivery Board & Another Exparte. Eng. Judah Abekah (2015) 7078 (KLR)*has been relied on.
17. On the demand for payment of Kshs. 2,000,000/= as compensation, it is submitted that the claim is premature, as the applicant is yet to comply with the procedure of compensation set out under Section 25 (2) and (3) of the Act, and Regulation 27(2) of the regulations. that consequently. It is further submitted that in accordance with 9 (1) (2) of the Fair Administrative Actions Act (FAAA) the above stated procedure must be complied with.
18. It is the respondent’s further submission that the prayers sought offends the principle of exhaustion; that the Applicant must exhaust the avenues provided by statute before moving to court. In this regard the respondent has relied on the case of *Mumba & 7 others vs Munyao & 148 others [2019] KESC 83(KLR) , NGO coordination Board vs E.G & others [2023] KESC 17(KLR) and Peter M. Njuguna vs Kenya wildlife services [2017] KECA 42 (KLR)*

Analysis and determination

19. I have identified the following issues for determination:
 - a). Whether the 1st respondent have statutory obligation to review and pay the Applicant’s claim.
 - b). Whether an order for compensation should be made.
 - c). What appropriate orders should issue.



Respondent's statutory obligations to the Applicant

20. The facts giving rise to the applicant's claim are not in dispute. On 5th November 2023 the Applicant was attacked and injured by an Elephant while on his way home at Oldonyiro location of Isiolo County. The Applicant submitted his claim for compensation to the respondent. The respondent has told the court that as the secretary to the 2nd respondent, it is waiting for the Cabinet secretary to give directive on the verification and deliberations of the claim. To the respondent, it is only the cabinet secretary who can direct the 2nd respondent to convene and deliberate on the claim.
21. The process of compensation is set out under section 25 of the Act. It begins with the claimant submitting the claim documents to the committee, established under section 18 of the Act, and sued herein as the 2nd respondent. The 2nd respondent is supposed to verify the claim within 30 days of receipt of documents and make recommendation to the Cabinet Secretary. The Cabinet Secretary is then supposed to make payments within 30 days of receiving the advice of the 2nd respondent.
22. It is the applicant's case that despite having dully submitted his claim, the 2nd respondent has not deliberated on his claim so as to make any recommendation for payment; That, it is the role of the respondent to direct the 2nd respondent to initiate the deliberations.
23. On the other hand, the 1st respondent insists that it has no mandate to direct the 2nd respondent in the said exercise, and that, giving such a directive is the work of the cabinet secretary. That the cabinet secretary is the one to direct the committee to sit and do the deliberations. The 1st respondent has based its argument on section 18(3) of the Act and the fact that the cabinet is the appointee of most of the members of the committee and is the one to authorize any more meetings than those designated if required.
24. I have considered the both parties submissions in this regard. Contrary to the respondent's assertion, there is nowhere in the Act stating that the cabinet secretary directs the 2nd respondent to sit. The respondent's argument however is that the duty is implied firstly by virtue of the fact that the cabinet secretary is the appointing authority of most members of the 2nd respondent. And secondly, by virtue of the fact that under section 18(2) of the Act it is only the Cabinet secretary who can authorize any extra meetings if so required by the 2nd respondent.
25. However, section 18, which the 1st Respondent is relying on provides for the setting up of county compensation committees, and prescribes the number of meetings that the committee should hold in a year. Section 18(3) should therefore be read with section 18(2). The relevant portions of section 18 sections are hereby reproduced:
 18. Community Wildlife Conservation Committees
Each County shall have Wildlife Conservation Committee of—
 - (2) The Community Wildlife Conservation Committees may hold a maximum of four meetings every financial year
 - (3) Despite subsection (2), additional meetings may be held with the prior consent of the Cabinet Secretary.
26. Thus, Section 18(2) is a general prescription on the number of meetings that the committee of every county must hold in a given year , and then any additional must be with the approval of the cabinet secretary. To suggest that section 18(3) implies that the cabinet secretary is the one directing the sittings of the committee is an exaggerated interpretation of the section. In any case, the functions of the committee as can be seen in section 19 is not just to deliberate on the claims. Apart from verifying



- the claims, the committees is also charged with, among others, development and implementation, in collaboration with the Service and Community Wildlife Associations, mechanisms for mitigation of human wildlife conflict. It also has the duty of bringing together relevant stakeholders to harness participation in conservation and management programmes of wildlife.
27. These other functions could as well be the subject of the extra meeting requiring the approval of Cabinet secretary. The inference made by the respondent would only be valid, if the role of the committees set up under section 18 were limited to verifying claims and making recommendations only.
 28. Further , in terms of section 7 of the Act, that the formation of the compensation committees is the work of the 1st respondent. The section sets out the functions of the 1st Respondent. One of those functions is to set up County Wildlife Conservation Committee in respects of each county. It is the therefore evident that the committee established under section 18 is a creature of the 1st respondent, established pursuant to section 7(c).
 29. Also pursuant to regulation 15 of the 2017, the 1st respondent is responsible for the declaration of vacancies in any of the committees established under section 18, either at the first establishment of a committee, of a particular county or whenever a vacancy arises.
 30. Further again, as submitted by the Applicant the 1st respondent is responsible for the payment of salaries and allowances of the committee members which include the 2nd respondent .
 31. The pertinent question is in what capacity is the respondent performing all the functions referred to under paragraphs 27 to 29 hereof? It is evident that the 1st respondent is performing the aforesaid function because it is the principal or the employer of the 2nd respondent. To this extent, the submissions by the Applicant that the 2nd respondent is an Agent of the 1st respondent is valid
 32. Further , I have considered the decision in the case of Kenya Wildlife Service v Joseph Musyoki Kalonzo [2017] KECA 234 (KLR) where the court of Appeal held : “The appellant admits the duty to manage and conserve wildlife. That duty comes with the attendant responsibility to shoulder any claims of loss or damage caused by the breach of that duty”
 33. Finally as regards the various responsibilities of the respondents in the compensation process the court in Joseph Musyoki’s case(supra) went on to state : The law on this point as succinctly pronounced in Joseph Boru Ngera & Another vs Kenya Wildlife Service vs Rift Valley Agricultural Contractors Limited [2014] eKLR among others is still good law on this point. The cabinet secretary referred to in the Act pays the money on behalf of the appellant. Neither the Court nor the parties should concern themselves with the internal arrangements of the appellant as to whether it is the CEO of the appellant or the cabinet secretary who should disburse the money. The Appellant in the cited case was the Respondent herein.
 34. It is my finding therefore that in as far as the applicant’s claim has not been acted on, the 1st respondent had failed in its statutory duty. The order of mandamus in respect to prayer one is therefore warranted.
 35. Under prayer 2 of the application, the Applicant prays that the 1st respondent be compelled to report to this court on compliance. I need to point out that Regulation 27 set out the timelines for compliance by the committee and the cabinet secretary. Consequently, once the 1st respondent complies with Order 1, the process should take a life of its own, which include reference to the Environment Tribunal if it becomes necessary. In any case, in the event of default of the orders of this court, the Applicant will have the liberty to seek the enforcement, through the usual execution process. I do not therefore consider it necessary for this court to monitor the work of the respondents.



whether an order for compensation should be made.

36. The Applicant has asked this court to compel the respondent to make payment for a ksh. 2,000,000 set by the Act. That is not the work of the court, and as submitted by the respondent it is premature. The process must run through the entire process provided under section 25 of the Act. Any payment to be made is subject to an assessment by the Compensation Committee. This court cannot therefore usurp the work of the respondents clearly laid out under the Act.
37. The respondent has brought up the issue of exhaustion principle, which principle is also embodied in Section 9(2) of the *Fair Administrative Action Act*. It is argued that the applicant ought to exhaust the alternative mechanism under the statute.
38. However, a reading of the entire section 25 shows that for the doctrine to become a defence it presupposes that the respondents would have set in motion the process of compensation, or that the claim had not been filed in the first place. In this case the respondents are yet to commence the process. Therefore am in agreement with the Applicant that the Respondent cannot plead the defence of the doctrine or the provisions of section 9(2) of FAAA yet it has not set in motion the process of compensation. The essence of the present Application is simply to compel the respondent to carry out its duty under the Act.
39. In conclusion , I hereby proceed to make orders as follows:
- a). An order of mandamus is hereby issued directing the respondents to verify and make a determination of the ex-parte applicant's claim lodged on 7th June 2024 ,within 30 days of this order and thereafter, make payment, or convey the decision arrived at, to the exparte applicant, within 30 days following the said deliberation.
 - b). The costs of the Application, assessed at ksh. 30,000 is awarded to the Applicant.

DATED , SIGNED AND DELIVERED THIS 16TH DAY OF OCTOBER , 2025.

S. CHIRCHIR.

JUDGE.

In the presence of:

Roba Katelo- court Assistant.

Mr. Mutai for the 1st respondent.

